

Declaration of Kerry B. Hillier

1. My name is Kerry B. Hillier. I am currently employed as the Manager, Intellectual Property for Ballard Power Systems, Inc. ("Ballard") a Canadian corporation with its headquarters in British Columbia, Canada. I have held this position since May 3, 2004. Prior to that time, I was employed as Intellectual Property Counsel for Ballard.
2. Pursuant to a Memorandum of Understanding (MOU) executed July 8, 2004, among Ballard, DaimlerChrysler AG (DCAG) and Ford Motor Company (Ford), Ballard has agreed to the divestiture of one of its businesses in a sale to DCAG and Ford.
3. It is my understanding that in connection with the negotiations that preceded the execution of the MOU commencing at least as early as October, 2003, Ballard determined to preserve all of its assets related to the transaction, including refraining from allowing related patents to expire or patent applications to become abandoned. The existence of the negotiations was then known only to a small number of people within the Ballard organization.
4. The business which is the subject of the divestiture to DCAG and Ford includes the development and production of fuel cell systems, including the related gaseous fuel generators, exhaust gas cleaning apparatus, valves, controls and other peripheral systems, as well.
5. During May 2004, in my capacity as Intellectual Property Counsel, I instructed (or authorized others to instruct) Ballard's outside patent counsel to allow U.S. patent application Serial No. 09/555,899, of which Ballard is currently the record owner, to become abandoned, due to budgetary considerations for our intellectual property operations.

6. U.S. patent application Serial No. 09/555,899 relates to the subject matter of the MOU referred to in Paragraph 2 above, and thus falls within the scope of Ballard's determination not to abandon related patents and applications, as set forth in paragraph 3 above.
7. I did not learn of the existence of the negotiations referred to in Paragraph 3, or of Ballard's determination that it would not abandon any patent applications related thereto, until after I became Manager, Intellectual Property on May 3, 2004.
8. Thus, at the time when I made the decision to instruct outside counsel to abandon the subject application, I was not aware of the company's policy not to abandon any such applications. Had I known that the above application is likely to be included in the transaction contemplated by the MOU, and that it was the company's intention not to abandon any such applications, I would not have instructed counsel to allow it to be abandoned.
9. Accordingly, the instruction to abandon was contrary to the company's policy and intention regarding these applications, and was occasioned solely by my lack of information regarding the existing negotiations, and in particular regarding such policy.
10. At the time when I became Manager, Intellectual Property, U.S. patent application Serial No. 09/555,899 had not yet become abandoned. My failure to reverse the previous instructions to abandon this application after I learned of the existence of the pending negotiations, was due to inadvertence on my part, and did not reflect the policy or intention of Ballard.
11. The abandonment of the above-identified U.S. patent applications, including the entire delay from the time of their abandonment until the

present, was therefore unintentional. It was never the intention of Ballard to abandon these applications.

12. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.


Kerry B. Hillier

Date: 31 Jan 05

Witness


